U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8721820

Date: NOV. 25, 2020

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a foreign trade executive, seeks classification as an alien of extraordinary ability.[1] This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers, concluding that the record did not establish that the Petitioner had a major, internationally recognized award, nor did he demonstrate that he met at least three of the ten regulatory criteria. We came to the same conclusion within our decision on appeal. The Petitioner now submits a motion to reconsider and asserts that he meets four additional criteria as well as the one criterion we decided in his favor in our appellate decision. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence.[2] Upon review, we will dismiss the motion.

I. LAW

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor."[3] The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles). Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor.[4]

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[1] *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A).
[2] Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).
[3] 8 C.F.R. § 204.5(h)(2).
[4] *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

A motion to reconsider is based on an *incorrect application of law or policy*. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3). If warranted, we may grant requests that satisfy these requirements, then make a new eligibility determination.

II. ANALYSIS

In denying the petition, the Director found that the Petitioner met one of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x), relating to judging but that he had not satisfied any of the other criteria. When we dismissed the Petitioner's appeal, we agreed that he met the judging criterion, we further determined that he met the leading or critical role criterion, but ultimately concluded that he did not satisfy any other claimed provisions: prizes or awards; membership; published material; original contributions; or high salary or remuneration.

Within the motion, the Petitioner addresses the criteria relating to prizes or awards; membership; published material; and original contributions. However, for the reasons discussed below, we determine that the Petitioner has not established that our decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy as required to meet the requirements for filing a motion to reconsider.

A. Procedural Shortcoming

As an initial issue, the regulation at 8 C.F.R. § 103.5(a)(1)(iii) requires that a motion must be accompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding. We note that the Petitioner did not submit a statement relating to this mandate. Pertaining to this shortcoming, the regulation at 8 C.F.R. § 103.5(a)(4) requires that a motion that does not meet applicable requirements shall be dismissed. As the Petitioner did not provide the required statement, the motion must be dismissed based on this essential regulatory requirement.

B. Motion to Reconsider

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy, and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision.[5] We do not consider new facts or evidence in a motion to reconsider. We note that disagreeing with our conclusions without showing that we erred as a matter of law or pointing to policy that contradicts our analysis of the evidence, is not a ground to reconsider our decision.[6]

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

Within our decision on the appeal, we discussed six awards; five of which did not list the Petitioner as the recipient. For those outstanding five awards, the Petitioner's employer, [redacted]

[5] 8 C.F.R. § 103.5(a)(3).

[6] *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit in essence, the same brief and seek reconsideration by generally alleging error in the prior decision.)

[redacted], was the recipient of the awards. The only award naming the Petitioner as its recipient was the Order of Business Merit 2009 from the [redacted] Academy of Arts, Culture, and History, and he does not contest our determination relating to this particular award.

On motion, the Petitioner argues that awards issued to a corporation cannot be categorically rejected. In support of this asserted error on our part, the Petitioner cites to what he claims is the Adjudicator's Field Manual, which has since been incorporated into the USCIS Policy Manual.[7] The text the Petitioner quotes attempting to show our appellate decision was incorrect does not exist within the resource he cites. It appears that the Petitioner's quote can be attributed to an interim version of a USCIS policy memorandum from August 2010.[8] However, a final policy rescinded and superseded that interim memorandum in December of that same year. As a result, the Petitioner has not demonstrated our conclusion was incorrect that, in this instance, the five awards issued to his employer do not satisfy the awards criterion.[9]

We note that the regulation contains two mandatory elements: (1) that the alien is the recipient of the accolades, and (2) that the prizes or awards be nationally or internationally recognized for excellence in the field. Because the Petitioner has not demonstrated we erred as it relates to the first element, it is unnecessary for us to analyze his other claims on motion relating to whether the awards issued to his employer received national or international recognition.

Accordingly, the Petitioner did not establish that we erred in our determination for this criterion.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner asserts that he meets the requirements of this criterion through his position as a member, founder, and former vice president of the [redacted]. The Director held that while the Petitioner had established his membership in [redacted] he had not shown that this association requires outstanding achievements of its members as judged by recognized national or international experts in their disciplines or fields. In our appellate decision, we discussed the organization's bylaws noting they reflected several membership levels, to include founding members. We noted that the record lacked evidence relating to the organization's criteria for board membership or its selection process. This meant the Petitioner did not demonstrate that to be appointed to its board, [redacted] required outstanding achievements, as judged by recognized national or international experts.

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[7] See 6 *USCIS Policy Manual* F, https://www.uscis.gov/policymanual.

[8] See USCIS Policy Memorandum PM-602-0005, *Evaluation of Evidentiary Criteria in Certain Form I-140 Petitions (AFM Update AD 10-41)* 5 (Aug. 18, 2010), http://www.uscis.gov/legal-resources/policy-memoranda.

[9] The Petitioner also references to one unpublished 2005 decision from this office. While 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. We may consider the reasoning within the unpublished decision; however, the analysis does not have to be followed as a matter of law. Notably, the Petitioner does not offer any information relating to that 2005 decision in an attempt to demonstrate how that case and the present one might correlate.

On motion, the Petitioner claims we did not follow USCIS policy on this issue, and we did not consider the letter from [redacted] As it relates to USCIS policy on the matter, it states: "Associations may have multiple levels of membership. The level of membership afforded to the alien must show that in order to obtain that level of membership, the alien was judged by recognized national or international experts as having attained outstanding achievements in the field for which classification is sought."[10] The Petitioner posits that because he "was judged by experts and highly qualified individuals in the field and that he was elected due with renowned and outstanding achievements," that he demonstrated eligibility under this criterion.

However, within this statement, the Petitioner did not address the regulatory language that mandates the organization itself requires outstanding achievements of its members (at the membership level in question). This regulation requires that (1) the associations utilize nationally or internationally recognized experts to judge the achievements of prospective members to determine if the achievements are outstanding, and (2) the associations require this outstanding determination as a condition of eligibility for prospective membership. The Petitioner's claim that he "was judged by experts and highly qualified individuals" and those individuals granted him board membership because of his achievements lacks the final salient element that the organization demands outstanding achievements as a prerequisite. The Petitioner did not offer evidence relating to [redacted]'s board membership requirements. We noted this shortcoming in our appellate decision when we stated: "The record does not demonstrate, however, the organization's criteria for board membership or its selection process." On motion, the Petitioner does not establish that this determination was incorrect based on the record as it then existed.

Turning to [redacted]'s letter, the Petitioner did not present this evidence as applying to this criterion within the appeal brief. Therefore, it is not apparent how our appellate decision could have been incorrect based on the Petitioner's claims and evidence in the record at that time. This is insufficient to claim as a basis for a motion to reconsider.[11]

Consequently, the Petitioner has not shown our decision was incorrect under this criterion based on the evidence in the record when we made our appellate decision.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner's evidence under this criterion consisted of articles published between 2010 and 2013 in a newspaper and on multiple websites. Within our appellate decision, we determined that the provided articles were not about the Petitioner, instead focusing on projects and merely mentioned or quoted him in discussing those projects. We further noted that articles that are not about the Petitioner do not establish eligibility for this criterion and we cited to *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-

[10] USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 7 (Dec. 22, 2010), http://www.uscis.gov/legal-resources/policy-memoranda.

[11] *See* 8 C.F.R. § 103.5(a)(3).

RJJ at *1, *7 (D. Nev. Sept. 8, 2008) in which the court upheld a finding that articles about a show are not about the actor.

On motion, the Petitioner does not cite to any pertinent precedent decisions to support his contention that our decision was based on an incorrect application of law or USCIS policy.[12] Instead, he states that "[a]ll the material submitted is related to the Petitioner and his work in the field of foreign trade." At best, the Petitioner identifies an unpublished decision from this office that granted the published material criterion, and he claims that the scenario in that case correlates with the present petition.

First, while 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. We may consider the reasoning within the unpublished decision; however, the analysis does not have to be followed as a matter of law. Second, we disagree that the two cases are sufficiently similar. In the cited case, a petitioner showed that two of the United Kingdom's horse racing dignitaries interviewed the alien after his horse beat the race favorite, and the interview was broadcast on television on a program that averages millions of viewers. That is different than the Petitioner's situation in which the published material merely mentioned and quoted him. An article that is not about the Petitioner does not meet this regulatory criterion.[13]

Therefore, the Petitioner did not establish that we erred in our adverse determination for this criterion.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

The Petitioner coined his claimed contribution to his field under this criterion as '[redacted]'. This method essentially amounts to exporting [redacted] products through the use of exporter companies. The Petitioner also highlights his presentations to business organizations as supporting his eligibility. In our appellate decision we described the content of several letters that discussed [redacted]' finding that they primarily related to his status in the field without providing examples of his contributions that were of such import that they rose to the level of major significance to the entire field. Lacking from the letters were adequate details relating to the Petitioner's contributions and how they had a demonstrable impact in the field as a whole.

Within his motion, the Petitioner discusses letters from two organizations, [redacted] and the [redacted]. The Petitioner quotes from our appellate decision in which we summarized the content of the letters from these two organizations. Within our decision on the appeal, we stated:

> The authors provide highlights of the Petitioner's work with [redacted] and [redacted] including his position as a member of the Foreign Trade Council, where his work focused on simplifying [redacted] foreign trade operational procedures for micro, small and medium enterprises, and facilitating the access of foreign companies into the

[12] *Id.*

[13] *See Victorov v. Barr*, No. CV 19-6948-GW-JPRX, 2020 WL 3213788, at *8 (C.D. Cal. Apr. 9, 2020) (quoting *Noroozi v. Napolitano*, 905 F.Supp.2d 535, 545 (S.D.N.Y. 2012) (finding that articles that are about a team or a competition and only briefly mention an alien do not satisfy the published material criterion).

[redacted] market. The Petitioner also led the reception of foreign delegations on international missions to [redacted] with an aim to promote and develop trade and institutional relations for both [redacted] companies and the [redacted] He was also involved in presentations at seminars and workshops at [redacted], aimed at empowering [redacted] companies to operate in international business and foreign trade, and he represented [redacted] with other organizations and governmental agencies worldwide.

The Petitioner argues that the content of our quote was sufficient to qualify him under this criterion. As support, the Petitioner cites to *Visinscaia v. Beers*, 4 F. Supp. 3d 126 (D.D.C. 2013) for two propositions. First, in the *Visinscaia* case, the court found that because letters she submitted did not mention her, or only mentioned her in passing, that she had not shown a reliance on her work, which precluded her from demonstrating her contributions qualified under this criterion. Here, the Petitioner applies the inverse claiming that letters he submitted described his contribution showing sufficient reliance on his work. Second, the Petitioner notes that the alien in the *Visinscaia* case did not show that others in the industry had adopted her claimed special technique, but he has provided material in this case demonstrating others have used his methods.

While the letters in the record may discuss the Petitioner's contribution and may illustrate that others in his field have utilized his methods, lacking are the results the companies or entities experienced after adopting what the Petitioner calls '[redacted]' This relates directly to whether the Petitioner's work has impacted the field rather than simply made notable supplements to it. If companies adopted the Petitioner's method, but did not experience markedly improved results, then it is only a contribution without any major significance in the field. The comments within the letters from [redacted] and [redacted] quoted above, merely tend to indicate that the Petitioner has made incremental progress to the general knowledge base associated with exporting [redacted] products, which is inadequate to meet this criterion's requirements.

Turning to the letter from [redacted], a manager at [redacted] (referred to as [redacted]. within our appellate decision) described what the Petitioner accomplished during a 2013 trade event, to include that he evaluated ten companies with the purpose of carrying on negotiations between them and potential buyers from Central America, the Caribbean, and the United States. However, she does not explain any results from his participation. She does not explain why she considers the Petitioner's involvement to be impactful on the event, or how it has impacted the broader field.

Finally, in reference to two letters the Petitioner offered from [redacted], the owner of [redacted] and [redacted] the owner of [redacted], the Petitioner claims that these companies benefitted from [redacted]'s services when that company employed him. We note that aside from the information relating to each author and their company, these two letters are virtually identical in their content. As a general concept, when a petitioner has provided correspondence from different persons that contribute to the eligibility claim, but the language and structure contained within the letters is notably similar, the trier of fact may treat those similarities as a basis for questioning a petitioner's claims.[14] When letters contain such

[14] *See Matter of R-K-K-*, 26 I&N Dec. 658, 665 (BIA 2015); *Surinder Singh v. Board of Immigration Appeals*, 438 F.3d

similarities, it is reasonable to infer that the petitioner who submitted the strikingly similar documents is the actual source from where the suspicious similarities derive.[15] Because someone other than the authors appears to have drafted some portions of the letters, they possess diminished probative value. In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality.[16] While we acknowledge that the authors have provided their support for this petition, it is unclear whether the letters reflect their independent observations and thus an informed and unbiased opinion of the Petitioner's work. Setting the similarities aside, although the letters described a benefit to the individual companies, they did not explain the Petitioner's wider impact within the field as a whole. In addition to the reasons described in our appellate decision, these letters are insufficient to carry the Petitioner's burden and this material does not demonstrate that the Petitioner's contributions were of major significance in the field.

As such, we decide that the Petitioner has not shown our decision was incorrect under this criterion based on the evidence in the record when we made our appellate decision.

III. CONCLUSION

As the Petitioner did not demonstrate that we incorrectly dismissed his appeal, the Petitioner did not establish that he meets the requirements of a motion to reconsider.

ORDER: The motion to reconsider is dismissed.

145, 148 (2d Cir. 2006); *Wang v. Lynch*, 824 F.3d 587, 592 (6th Cir. 2016); *Dehonzai v. Holder*, 650 F.3d 1, 8 (1st Cir. 2011).

[15] *Cf. Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007); *Wang*, 824 F.3d at 592.

[16] *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (quoting *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)).